

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

21
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**United States Court of Appeals for the
District of Columbia**

JANUARY TERM, 1939.

No. 7328

413

**ANN. V. FITZHUGH, ADMINISTRATRIX, ESTATE
OF MARGARET B. PITNER, DECEASED AP-
PELLANT,**

vs.

**DISTRICT OF COLUMBIA, A MUNICIPAL
CORPORATION.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.**

FILED JANUARY 19, 1939

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United States Court of Appeals for the District of Columbia

JANUARY TERM 1939

No. 7328

ANNE V. FITZHUGH, ADMINISTRATRIX, ESTATE
OF MARGARET B. PITNER, DECEASED AP-
PELLANT,

vs.

DISTRICT OF COLUMBIA, A MUNICIPAL
CORPORATION, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

a. District Court of the United States for the
District of Columbia

At Law No. 89748

DISTRICT OF COLUMBIA, a Municipal Corporation, *Plaintiff*,

vs.

ANN V. FITZHUGH, Administratrix, Estate of Margaret B.
Pitner, deceased, *Defendant*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:

1 *Declaration*

Filed January 8 1938

In the District Court of the United States for the District
of Columbia

At Law No. 89748

DISTRICT OF COLUMBIA, a Municipal Corporation, District
Building, *Plaintiff*,

vs.

ANN V. FITZHUGH, Administratrix, Estate of Margaret B.
Pitner, deceased, 26 Ninth Street, Southeast, *Defendant*.

Now comes the plaintiff, District of Columbia, by its at-
torneys, and sues the defendant, Ann V. Fitzhugh, as ad-
ministratrix of the estate of Margaret B. Pitner, deceased,
for that, heretofore, the said Margaret B. Pitner became

and was indebted to the plaintiff in the sum of \$5,005.43, money paid and advanced by the plaintiff to Saint Elizabeths Hospital for board and care of the aforesaid decedent who was hospitalized at the aforesaid hospital from November 1, 1928 to July 15, 1936, at the expense of the plaintiff, as more particularly set forth in the bill of particulars attached hereto. Under the statute in such case made and provided, the estate of said incompetent decedent became indebted unto said plaintiff in the aforesaid amount of money, so paid and expended for her care and treatment in Saint Elizabeths Hospital. This indebtedness has not been paid and no part thereof has been discharged.

And the plaintiff says that it filed a claim on May 18, 1937 in the Probate Branch of this Honorable Court in the aforesaid sum of \$5,005.43 against the estate of the said decedent, Margaret B. Pitner.

And the plaintiff further says that the defendant
2 on May 20, 1937, in writing disputed and rejected the aforesaid claim of the District of Columbia, pursuant to Section 342 of the Code of Law for the District of Columbia, as amended.

Wherefore, the plaintiff further says that by reason of the foregoing, the defendant is justly indebted unto the plaintiff in the sum of \$5,005.43, with interest, costs of adjudication and costs of this suit as provided by the Code of Law for the District of Columbia in such case made and provided.

ELWOOD H SEAL

Corporation Counsel, D. C.

STANLEY DeNEALE

Assistant Corporation Counsel, D. C.

Attorneys for Plaintiff.

Bill of Particulars

*

*

*

Ann V. Fitz Hugh, Administratrix, Estate of Margaret B. Pitner, deceased, to District of Columbia, Dr.

For board and care at Saint Elizabeths Hospital of Margaret Pitner, now deceased, as follows:

From November 21, 1928 to June 30, 1929	(222 days @ 1.922)	\$426.68
July 1, 1929 to June 30, 1930	(365 days @ 1.81)	660.65
July 1, 1930 to June 30, 1932	(731 days @ 1.92)	1,403.52
July 1, 1932 to Dec. 31, 1932	(184 days @ 1.87)	344.08
Jan. 1, 1933 to June 30, 1933	(181 days @ 1.80)	325.80
July 1, 1933 to June 30, 1934	(365 days @ 1.55)	565.75
July 1, 1934 to June 30, 1935	(365 days @ 1.63)	594.95
July 1, 1935 to July 15, 1936	(380 days @ 1.80)	684.00
		\$5,005.43,

with interest on \$5,005.43, together with costs of adjudication and costs of this suit.

ELWOOD H SEAL

Corporation Counsel, D. C.

STANLEY DeNEALE

Assistant Corporation Counsel, D. C.

3 *Motion to Strike Declaration*

Filed April 1 1938

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Comes now the defendant by her attorneys and moves the court to strike the declaration filed herein by the plaintiff for the following reason:

1. That said declaration, which seeks recovery under a statute, is ambiguous and doubtful in meaning in that it does not appear therefrom whether the plaintiff seeks to recover under Section 14 or Section 15 or Section 19 of Chapter I, Title 16, D. C. Code.

ALEXANDER H. BELL

B

W. CAMERON BURTON

Attorneys for Defendant

Memorandum

May 18-1938.

Motion to Strike Declaration overruled. Leave to file Amended Declaration in 5 days, with 5 days thereafter to defendant to plead thereto.

Amendment to Declaration

Filed May 20 1938

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In accordance with offer of attorneys for plaintiff to amend the declaration in the above entitled cause and the Court's direction that said declaration be amended, to show the time decedent therein, Margaret B. Pitner, was adjudged to be of unsound mind, the following amendment is made:

The decedent, Margaret B. Pitner, was adjudged to be of unsound mind by the verdict of a jury in Lunacy
4 cause No. 12424 and committed to Saint Elizabeths Hospital on order of the Commissioners of the District of Columbia on November 16, 1928.

ELWOOD H SEAL

Corporation Counsel, D. C.

STANLEY DeNEALE

*Assistant Corporation Counsel, D. C.,**Attorneys for Plaintiff.*

Pleas

Filed June 11 1938

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Now comes the defendant, by her attorneys, and for pleas to the declaration as amended, filed herein, says:

1. That the cause of action sued upon herein to the extent of to-wit, Three Thousand, Nine Hundred and Eighty-Two Dollars and Thirty-Nine Cents (\$3,982.39) thereof, accrued on to-wit December 4, 1934 more than three years before the commencement of this suit including the period of to-wit thirty four days between the death of said Margaret B. Pitner on to-wit February 11, 1937 and the appointment of the defendant as administratrix of the estate of Margaret B. Pitner on to-wit March 17, 1937.

2. That she denies that the said Margaret B. Pitner was indebted to plaintiff in the sum of Five Thousand and Five Dollars and Forty-Three Cents (\$5,005.43) or any other amount; she admits that the said Margaret B. Pitner was hospitalized at the Saint Elizabeths Hospital from Novem-

ber 1, 1928 to July 15, 1936 and that the plaintiff paid the expense thereof in the amounts and for the periods set forth in the Bill of Particulars but avers that said amounts were not, nor any part thereof, paid or advanced at the request, either actual or implied, of said Margaret B. Pitner and denies that the estate of said Margaret B. Pitner or the defendant, as administratrix thereof, became indebted in the sum of Five Thousand and Five Dollars and Forty-Three Cents (\$5,005.43) or any part thereof by virtue of any statute; she admits that the said Margaret B. Pitner was adjudged of unsound mind on November 16, 1928 and was committed to Saint Elizabeths Hospital but avers that said adjudication was for unsound mind with dangerous tendencies to others; she admits that the sum of Five Thousand and Five Dollars and Forty-Three Cents and no part thereof has been discharged by said Margaret B. Pitner or defendant and she admits that plaintiff filed a claim on May 18, 1937 which was rejected on May 20, 1937 as in the said declaration alleged but denies each and every other allegation in the said declaration alleged.

3. That the said Margaret B. Pitner was the wife of William Pitner from to-wit November 1, 1928 until to-wit February 3, 1936, when he died, and that, if any liability arose for reimbursement to the plaintiff for the expense of the hospitalization of the said Margaret B. Pitner at the Saint Elizabeths Hospital during said period, the said William Pitner became liable therefor as her husband, the said William Pitner being financially well able to make such reimbursement.

That the estate of the said William Pitner is now in process of administration in the Probate Branch of this Honorable Court wherein the said plaintiff filed on to-wit a claim in the sum of Five Thousand and Five Dollars and Forty-Three Cents for the expense of hospitalization of said Margaret B. Pitner sued for herein.

4. That the said Margaret B. Pitner was by the verdict of a jury in Lunacy cause No. 12424 adjudged of unsound mind with dangerous tendencies to others on to-wit November 16, 1928 upon petition of the Commissioners of the District of Columbia; that Arthur B. Lambert, Esquire, was appointed committee of the person

and the estate of said Margaret B. Pitner in said Lunacy cause and qualified as such committee on to-wit June 1, 1936; that said committee has filed his first and final account in said cause and has been discharged; that by virtue of the statute in such case made and provided the said committee and not the defendant became liable to reimburse the plaintiff for all monies by it expended in caring for and treating said Margaret B. Pitner up to the time of the appointment of said committee; that by virtue of the statute in such case made and provided the Equity branch of this Honorable Court had full power and authority to make such orders or decrees as to it seemed proper for the care of the person of the said Margaret B. Pitner; that the plaintiff made no claim against the said committee for the amount expended by it up to the time of the appointment of said committee; that the Equity court did not make, nor did the plaintiff request it to make, any order or decree for payment to the plaintiff of any money expended or to be expended by it for the care of the said Margaret B. Pitner in the Saint Elizabeths Hospital; and that the estate of said Margaret B. Pitner, or the defendant, as administratrix thereof, did not become liable to the plaintiff for the amount sued for herein, nor any part thereof.

ALEXANDER H. BELL

B

W. CAMERON BURTON

Attorneys for Defendant

7

Demurrer to Defendant's Pleas

Filed June 27 1938

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Comes now the District of Columbia, plaintiff in the above entitled cause, by its attorneys, and says that the pleas of defendant heretofore filed herein are bad in substance.

ELWOOD H SEAL

Corporation Counsel, D. C.

STANLEY DeNEALE

Assistant Corporation Counsel, D. C.

Attorneys for Plaintiff.

NOTE:

At the hearing of the foregoing demurrer, among the matters of law intended to be argued in support thereof, are the following:

1. The statute of limitations is not a bar to plaintiff's cause of action or to any part thereof.

2. The estate of the deceased lunatic through her committee was charged by statute with the duty of reimbursing plaintiff for the cost of her hospitalization, and such liability was not extinguished by death, although thereafter, recovery must be sought in the Probate instead of the Equity branch of the Court.

3. The husband of decedent was not in his lifetime, nor is his estate, liable for reimbursement to plaintiff of monies expended as in the declaration alleged.

4. The pleas of defendant make no allegations which if true constitute a good defense to plaintiff's claim or any part thereof.

8

Memorandum

Filed October 5 1938

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Upon the facts stated in the pleadings, in view of the decisions in *Baker v. District of Columbia*, 39 App. D. C. 42, *Depue v. District of Columbia*, 45 App. D. C. 54, and *In re Emma S. Gibbs*, Lunacy No. 14181, 64 W. L. R. 337, it is considered that: (1) the estate of the deceased Margaret B. Pitner is liable for the amount paid and advanced by the District of Columbia for her board and care from the date of her commitment to St. Elizabeth's Hospital until her death; and (2) that no part of the claim of the District, as set out in the declaration, is barred by the statute of limitations.

The plaintiff's demurrer to the pleas is accordingly sustained.

JOSEPH W COX

Justice

October 5, 1938.

Order Sustaining Demurrer

Filed October 19 1938

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This cause came on to be heard on the Demurrer of the plaintiff to the defendant's pleas and after due hearing thereon, it is by the Court this 19th day of October, 1938,

ORDERED that the Demurrer of the plaintiff is hereby sustained to each of the pleas heretofore filed by the defendant herein with leave to the defendant to file an Answer herein within ten days from the date hereof.

By the Court

JOSEPH W COX

Justice

No objection as to form.

W. CAMERON BURTON

Attorney for Defendant

9

Order for Judgment

Filed November 28 1938

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This cause came on to be further heard at this term, upon demurrer to the pleas to the declaration heretofore filed herein, and said demurrer having been sustained on the 5th day of October, 1938, with leave to file amended plea, and the time for filing such plea having expired and no such plea having been so filed, it is considered that the plaintiff recover against the defendant \$5,005.43 with interest at the rate of 6 per centum per annum from the 15th day of July, 1936, being the money payable by her to the plaintiff by reason of the premises, and its costs of suit and that it have execution thereof.

By the Court:

O R LUHRING

Justice.

No objection as to form:

W. CAMERON BURTON

Attorney for Defendant.

Notice of Appeal

Filed December 14 1938

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*

Notice is hereby given this 12th day of December 1938, that Anne V. Fitzhugh, Administratrix, Estate of Margaret B. Pitner, Deceased hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 28th day of November, 1938, in favor of District of Columbia against said Anne V. Fitzhugh, Administratrix, Estate of Margaret B. Pitner, Deceased

W. CAMERON BURTON

Attorney for Anne V. Fitzhugh, Administratrix

10

Memorandum

December 14-1938.

Undertaking on appeal (\$250)—filed.

Designation of Record on Appeal

Filed December 21 1938

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To the Clerk:

Please prepare transcript of record on appeal to the United States Court of Appeals for the District of Columbia in the above entitled case, to include the following:

1. Declaration and Bill of Particulars.
2. Motion to Strike Declaration.
3. Memorandum of minute entry overruling Motion to Strike.
4. Amendment to Declaration.
5. Pleas.
6. Demurrer to Defendant's Pleas.
7. Order sustaining Demurrer.
8. Order for Judgment.
9. Memorandum of docket entry of judgment.

10. Notice of Appeal.
11. Memorandum of filing of cost bond on appeal.
12. This designation.

W. CAMERON BURTON
Attorney for Defendant

I certify that on the 19th day of December, 1938, I mailed postpaid a copy of the foregoing designation to Messrs. Elwood H. Seal and Stanley De Neale, Attorneys for Plaintiff, at their last known address, District Building, Washington, D. C.

W. CAMERON BURTON
Attorney for Defendant

11 District Court of the United States for the
District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 10, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 89748 at Law, wherein District of Columbia, a Municipal Corporation, is Plaintiff and Ann V. Fitzhugh, Administratrix, Estate of Margaret B. Pitner, deceased, is Defendant, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 18th day of January, 1939.

(Seal) C. E. STEWART,
Clerk.

Endorsed on Cover: No. 7328. Anne V. Fitzhugh, Administratrix &c., Appellant, vs. District of Columbia, a Municipal Corporation. United States Court of Appeals for the District of Columbia Filed Jan 19 1939. Joseph W. Stewart, Clerk.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED APR 24 1939

IN THE *Joseph W. Stewart*

United States Court of Appeals^{CLERK}
FOR THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1939.

No. 7328.

ANN V. FITZHUGH, Administratrix, Estate of
Margaret B. Pitner, Deceased, *Appellant*.

v.

DISTRICT OF COLUMBIA, A Municipal Corporation.

BRIEF OF APPELLANT.

W. CAMERON BURTON,
Attorney for Appellant.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1939.

No. 7328.

ANN V. FITZHUGH, Administratrix, Estate of
Margaret B. Pitner, Deceased, *Appellant*.

v.

DISTRICT OF COLUMBIA, A Municipal Corporation.

BRIEF OF APPELLANT.

STATEMENT OF CASE.

This case involves an amount of money paid and advanced by the District of Columbia, appellee herein, to the Saint Elizabeth's Hospital for the board and care of Margaret B. Pitner (R. 3).

It appears from the pleadings that Margaret B. Pitner was committed to the Saint Elizabeth's Hospi-

tal on order of the Commissioners of the District of Columbia on November 18, 1928 after having been adjudged of unsound mind by a jury in Lunacy Cause No. 12424 (R. 4) which adjudication was for "unsound mind with dangerous tendencies to others" (R. 5). Margaret B. Pitner was hospitalized from November 1, 1928 to July 15, 1936 (R. 4) and appellee paid the expense thereof on a per diem basis which varied from year to year (R. 3).

On June 1, 1936, Arthur B. Lambert, Esquire, who had previously been appointed committee of the person and estate of Margaret B. Pitner, qualified as such committee (R. 5). Thereafter he filed his first and final account in Lunacy Cause No. 12424 and had been, prior to the filing of the pleas herein, discharged (R. 6).

From November 1, 1928 until February 3, 1936, Margaret B. Pitner was the wife of William Pitner who died on the last mentioned date (R. 5). He was financially well able to reimburse appellee for any money it had advanced for the board and care of his wife up to the time of his death (R. 5).

Appellee filed a claim on May 18, 1937 in the Probate Branch of the District Court of the United States for the District of Columbia against the estate of Margaret B. Pitner for the money so advanced by it, which claim was rejected on May 20, 1937 (R. 2). It also filed a claim in the same court against the estate of William Pitner for the expense of the hospitalization sued for herein (R. 5).

Thereafter appellee filed its declaration (R. 1) against appellant as administratrix of the estate of Margaret B. Pitner, alleging in substance that Margaret B. Pitner became indebted for money advanced by it for her board and care at Saint Elizabeth's Hos-

pital as set out in the bill of particulars attached; that under the statute in such case made and provided decedent's estate became indebted for the money so advanced; that it had filed its claim against the estate and that the same had been rejected (R. 1, 2). Appellant then moved to strike the declaration for the reason that the same, which sought recovery under a statute, was ambiguous and doubtful of meaning in that it did appear therefrom under which of several statutes recovery was sought (R. 3).

The motion was overruled (R. 3) and thereafter appellee filed an amendment to the declaration which alleged the date of the adjudication and commitment of Margaret B. Pitner (R. 4).

Appellee filed four pleas to the declaration as amended which were in substance as follows: (1) That part of the claim was barred by limitations (R. 4). (2) That Margaret B. Pitner was not indebted as alleged; that the expense of hospitalization was not paid or advanced at the request, either actual or implied of Margaret B. Pitner; that the estate of Margaret B. Pitner did not become indebted to appellee for the sum claimed, or any part thereof, by virtue of any statute and that Margaret B. Pitner was adjudged of unsound mind with dangerous tendencies to others (R. 4, 5). (3) That William Pitner who was the husband of Margaret B. Pitner from November 1, 1928 until February 3, 1936, when he died, was liable for her expenses of hospitalization for that period, he being financially well able to pay the same and that a claim for such expenses had been filed against his estate by appellee (R. 5). (4) That Margaret B. Pitner was adjudged of unsound mind with dangerous tendencies to others; that a committee of her person and estate was appointed and qualified and filed his

tal on order of the Commissioners of the District of Columbia on November 18, 1928 after having been adjudged of unsound mind by a jury in Lunacy Cause No. 12424 (R. 4) which adjudication was for "unsound mind with dangerous tendencies to others" (R. 5). Margaret B. Pitner was hospitalized from November 1, 1928 to July 15, 1936 (R. 4) and appellee paid the expense thereof on a per diem basis which varied from year to year (R. 3).

On June 1, 1936, Arthur B. Lambert, Esquire, who had previously been appointed committee of the person and estate of Margaret B. Pitner, qualified as such committee (R. 5). Thereafter he filed his first and final account in Lunacy Cause No. 12424 and had been, prior to the filing of the pleas herein, discharged (R. 6).

From November 1, 1928 until February 3, 1936, Margaret B. Pitner was the wife of William Pitner who died on the last mentioned date (R. 5). He was financially well able to reimburse appellee for any money it had advanced for the board and care of his wife up to the time of his death (R. 5).

Appellee filed a claim on May 18, 1937 in the Probate Branch of the District Court of the United States for the District of Columbia against the estate of Margaret B. Pitner for the money so advanced by it, which claim was rejected on May 20, 1937 (R. 2). It also filed a claim in the same court against the estate of William Pitner for the expense of the hospitalization sued for herein (R. 5).

Thereafter appellee filed its declaration (R. 1) against appellant as administratrix of the estate of Margaret B. Pitner, alleging in substance that Margaret B. Pitner became indebted for money advanced by it for her board and care at Saint Elizabeth's Hos-

pital as set out in the bill of particulars attached; that under the statute in such case made and provided decedent's estate became indebted for the money so advanced; that it had filed its claim against the estate and that the same had been rejected (R. 1, 2). Appellant then moved to strike the declaration for the reason that the same, which sought recovery under a statute, was ambiguous and doubtful of meaning in that it did appear therefrom under which of several statutes recovery was sought (R. 3).

The motion was overruled (R. 3) and thereafter appellee filed an amendment to the declaration which alleged the date of the adjudication and commitment of Margaret B. Pitner (R. 4).

Appellee filed four pleas to the declaration as amended which were in substance as follows: (1) That part of the claim was barred by limitations (R. 4). (2) That Margaret B. Pitner was not indebted as alleged; that the expense of hospitalization was not paid or advanced at the request, either actual or implied of Margaret B. Pitner; that the estate of Margaret B. Pitner did not become indebted to appellee for the sum claimed, or any part thereof, by virtue of any statute and that Margaret B. Pitner was adjudged of unsound mind with dangerous tendencies to others (R. 4, 5). (3) That William Pitner who was the husband of Margaret B. Pitner from November 1, 1928 until February 3, 1936, when he died, was liable for her expenses of hospitalization for that period, he being financially well able to pay the same and that a claim for such expenses had been filed against his estate by appellee (R. 5). (4) That Margaret B. Pitner was adjudged of unsound mind with dangerous tendencies to others; that a committee of her person and estate was appointed and qualified and filed his

first and final account and was discharged; that by virtue of statute the committee was liable to reimburse appellee up to the time of his appointment; that the Equity Branch of the Court had full power and authority to make orders and decrees for the care of the lunatic; that appellee made no claim against the committee for the amount it expended up to the time of his appointment; that the Equity Court did not make, nor did appellee request it to make, any order or decree for payment of the money expended or to be expended by appellee for the care of Margaret B. Pitner and that her estate and the administratrix thereof did not become liable for the amount sued for, or any part thereof (R. 5, 6).

Appellee filed a demurrer to the pleas which was sustained and appellant electing to stand on her pleas, this appeal was prosecuted.

Appellant did not file a Statement of Points or Assignment of Errors in the lower Court because the complete record was designated. Rule 75 (d), Federal Rules of Civil Procedure.

ASSIGNMENT OF ERRORS.

The Court erred:

1. In overruling defendant's motion to strike plaintiff's declaration.
2. In sustaining plaintiff's demurrer to defendant's pleas, and each of them.

ARGUMENT.

The questions to be decided here are: firstly, whether the motion to strike the declaration should have been sustained and secondly, whether the pleas were sufficient in law to constitute a good defense to appellee's claim.

In deciding the sufficiency of the declaration against the motion to strike, the question presented is whether the declaration was so ambiguous as to be bad in form and was bad in substance for failure to state sufficient facts to meet the terms of any statute.

In deciding the sufficiency of the pleas a number of propositions of law are presented and they are as follows: (1) The estate of the lunatic, after death, was not charged with the duty, through the personal representative, of reimbursing appellee. (2) The husband of the decedent was responsible for her necessities, if any liability therefor existed. (3) The statute of limitations is a bar to part of appellee's cause of action, if any existed.

The Declaration is Bad in Form and Substance.

The declaration alleges that Margaret B. Pitner became indebted to appellee for money paid and advanced by appellee for her board and care at Saint Elizabeth's Hospital (R. 1, 2) and further alleges that "Under the statute in such case made and provided, the estate of said incompetent decedent became indebted unto said plaintiff in the aforesaid amount of money" (R. 2).

It is therefore necessary to look to the statute and we find under Title 16, D. C. Code, three sections which provide for the payment of board or expenses by a lunatic, namely, Sections 14, 15 and 19 of Chapter 1. Section 14 provides as follows:

"Whenever there are vacancies, private patients from the District may be received at a rate of board to be determined by the visitors, to be in no case less than the actual cost of their support, and may remain until restored to reason.

The friends of the patient shall comply with the regulations of the hospital in respect to payment of board and in all other respects."

Section 15 provides as follows:

"Whenever it appears in the case of any insane person whose insanity commenced while he was a resident of the District of Columbia that he is able to defray a portion, but not the whole of the expenses of his support and treatment in Saint Elizabeths Hospital, the board of visitors of the hospital is authorized to inquire into the facts of the case; and if it appears to the board, upon such inquiry, that such insane person has property and no family, or has more property than is required for the support of his family, then, as a condition upon which such insane person, admitted or to be admitted as provided in this chapter, shall receive or continue to receive the benefits of the hospital, there shall be paid to the superintendent from the income, property, or estate of such insane person such portion of his expenses in the hospital as a majority of the board shall determine to be just and reasonable, under all the circumstances."

Section 19 provides as follows:

"The jury to be used in case the Commissioners of the District of Columbia are the petitioners shall be impaneled by the United States marshal for said District, upon order of the court, from the jurors in attendance upon the criminal courts of said District, who shall perform such services in addition to and as part of their duties in said criminal courts: *Provided*, That during such time as jurors are not in attendance upon said criminal courts the court may direct the said marshal to impanel the jurors in attendance upon the police court of said District, who shall perform such duties in addition to and as part of their du-

ties in said police court; or the said court may direct a special jury to be summoned for such inquiries. In case any such person adjudged to be of unsound mind has property, real or personal, the equity court of said District shall have full power in the same cause to appoint a committee or trustee of the person and estate of such person, according to the provisions of this chapter, and such committee or trustee shall reimburse, out of the funds of the lunatic, the District of Columbia for all court costs expended or incurred by it and for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment."

A statute does not have to be pleaded, it only being necessary that the pleader allege sufficient facts to bring himself within the terms of the statute. *Morrison v. Balto. & O. R. R. Co.*, 40 App. D. C. 391.

This is so because the court must take judicial notice of all of the public laws of the forum. *Moore v. Pywell*, 29 App. D. C. 312.

But here we have three statutes which might be applicable, if any one of them can be applicable at all. If the patient was a private one, Section 14 would apply; if he was a resident of the District of Columbia when insanity commenced and was able to pay a part but not the whole of his expenses, Section 15 would apply; and if he was adjudged an indigent insane person or one with homicidal or otherwise dangerous tendencies, Section 19 would apply.

It is apparent, therefore, that the declaration is not only bad for failure to state sufficient facts to bring the case within the terms of any statute but is ambiguous because the court had, by judicial notice, three statutes before it, which the declaration, by claiming

under a statute, asked it to apply. Pleadings must not be ambiguous or doubtful in meaning. Tyler's Stephen on Pleading, page 333.

When the appellee amended its declaration by adding the date of the adjudication of Margart B. Pitner, it only removed Section 14, *supra*, from consideration, because thereafter, if the declaration met the terms of any statute, either Section 15, *supra*, or Section 19, *supra*, would apply.

Appellant urges at this point that the declaration, even after the amendment, was bad in substance for failure to allege sufficient facts to bring the case within any statute and the importance of this contention will become more apparent later in connection with the argument respecting the demurrer to appellant's pleas.

The Estate of the Lunatic, After Death, Was Not Charged With the Duty, Through the Personal Representative of Reimbursing Appellee.

At common law an indigent person, who later came into possession of property, was not liable for necessities furnished at a public institution while he was indigent.

Baker v. District of Columbia, 39 App. D. C. 42.

Deer-Isle v. Eaton, 12 Mass. 328.

Medford v. Learned, 16 Mass. 215.

Oneida County v. Bartholomew, 82 Hun. 80, 31 N. Y. S. 106.

Montgomery County v. Gupton, 139 Mo. 303.

It is also established that a lunatic, able to pay, is not liable for such necessities at common law, unless there was some promise to pay therefor.

State v. Colligan, 128 Iowa 536, 104 N. W. 905.
Montgomery County v. Ristine, 124 Ind. 242, 24
 N. E. 990.

City of Albany v. McNamara, 117 N. Y. 168, 22
 N. E. 931.

In the case of *State v. Colligan*, *supra*, where an action was brought against a non-resident of the state to recover for his expenses while a patient in hospitals for the insane in the state, the court said, at page 905, 104 N. W.:

“The contention in behalf of the state is that the estate of an insane person is liable for the necessary expenses of his support. Conceding this legal proposition, we find no authority for holding that the state, having established hospitals for the insane, which are largely charities, and provided, in the interest of humanity and for the protection of society, that insane persons shall be confined therein, has any common-law right of recovery against those who receive the benefits of such public charities. The uniform rule seems to be that there is no liability on the part of the person who receives such benefit, or on the part of his relatives, to make compensation save as such compensation may be expressly required and provided for by statute. No such obligation is implied.”

It was held in *City of Albany v. McNamara*, *supra*, that a person receiving aid as a poor sick person from the officers of the poor in a city or county, in the absence of any representations as to his responsibility or physical condition, incurs no liability to repay the amount expended on his behalf by such city or county. The fact that the person receiving aid could have paid therefor was not controlling, the court saying, at page 933, 22 N. E.:

“Every person has a natural right to choose the mode and manner of his life, and, so long as he does not violate any positive provision of law, to follow it; and if aid and assistance are voluntarily furnished by the charitable and credulous, without deception to such person, we know of no rule that enables the person giving to recover back from the object of their benevolence the moneys so advanced to him.”

The court, in the case of *Montgomery County v. Ristine*, *supra*, said the following, as quoted in *Baker v. District of Columbia*, *supra*, at page 51:

“It is a thoroughly settled proposition that where one is received into a charitable institution for support or treatment, the law raises no implied obligation to pay, in the absence of contract where an individual is received into an institution established solely for beneficial purposes, the law refers his reception, and the relief administered to him, to motives of charity. * * * An institution or society, no more than an individual, can assume to be dispensing charity, and at the same time create a pecuniary obligation against one to whose necessities it ministers.”

This court pointed out in the case of *Depue v. District of Columbia*, 45 App. D. C. 54, that under the Act of 1905 (Title 16, Chapter 1, Sec. 18, 19 D. C. Code), no distinction is to be made between indigent insane persons and those with homicidal tendencies because as to the latter, they are to be committed “for the protection of society, irrespective of their ability to pay for their maintenance.” It is apparent that a person committed to an asylum because of dangerous tendencies to others, as the deceased was here, is under no greater obligation to pay than one who is indigent. Both are committed as a public charity.

In order that liability may be imposed upon a lunatic or his estate, it is therefore necessary that such liability be created by statute. In the *Baker* case, *supra*, this court said, at page 53, speaking of the statute respecting lunatics before the passage of the Act of 1905, *supra*:

“Under Sec. 4849, which was evidently enacted to create a liability *where none before existed*, an insane person able in part to contribute to his support is made liable therefor to the extent only of his ability to pay. Beyond that ability no obligation is created, and, we are convinced, none existed.” (Italics supplied.)

Appellee apparently bases its right to recover upon the provisions of Title 16, Chap. 1, Sec. 19, D. C. Code, set out at length *supra*, and upon the authority of the *Baker* and *Depue* cases, *supra*.

The *Baker* case, however, only sustained a recovery against the lunatic's committee for hospitalization from the time of the passage of the Act of 1905 to the date of the committee's appointment. There is nothing in this case which authorizes a recovery against the estate of the lunatic.

Since the Act of 1905 is in derogation of the common law, it must be strictly construed. Nowhere in that act is there any authority given to collect from the estate of a decedent lunatic. It is limited to reimbursement from the committee or trustee.

The *Depue* case, likewise, affords no support for the appellee's claim. There it was held that the liability of a committee, after appointment, to pay for his ward's future hospitalization, was based upon Sec. 1-6 of Title 16, D. C. Code, which gives the equity court jurisdiction over the person and estate of the lunatic and permits

it to make orders for the care and maintenance of the lunatic.

The equity court, however, has no inherent power to exercise jurisdiction over the person and estate of a lunatic and such power as the court has, is derived solely from statute, namely, Sec. 1-6, *supra*. In the case of *Clark v. Mathewson*, 7 App. D. C. 382, this court, in passing upon a decree of the lower court for the sale of a lunatic's real estate, reversed the decree and held that the lower court had no power to make it because not authorized so to do by statute, there being no inherent jurisdiction over the estates of lunatics.

It follows, therefore, that when Margaret B. Pitner died, the jurisdiction of the equity court over her affairs ceased and it could not order any payment out of her funds. Moreover, the committee had filed his final account and was discharged before the bringing of this action.

In his Memorandum (R. 7), the lower court relied upon *In re Emma S. Gibbs*, 64 W. L. R. 337, where a claim was filed against a committee after he had filed his final account and after the lunatic had died. It was held that the claim would not lie by the District of Columbia for hospitalization but that it should be filed in the Probate Court. Any such direction as to where the claim should be filed was, however, pure *obiter dicta*.

Since the equity court had no further jurisdiction, appellee could only recover under Sec. 15 or Sec. 19, *supra*. Under Sec. 19, however, it is provided that the committee or trustee "shall reimburse" the District of Columbia. This is mandatory, the word "shall" being a word of command as here used. No provision is made for reimbursement from the decedent lunatic's estate.

So far as Sec. 15, *supra*, is concerned, appellee has not alleged sufficient facts to bring itself within the provisions thereof. There does not appear to have been an inquiry by the board of visitors of the hospital and a determination of the portion of the expenses to be paid out of the income, property and estate of the lunatic.

Appellee bases its right to recover upon a statute and it must allege sufficient facts to bring itself within the terms thereof. *Morrison v. Balto. & O. R. R. Co.*, *supra*.

As previously urged, the declaration is therefore bad in substance and upon appellee's demurrer to appellant's pleas, the sufficiency of the declaration was called into question. It is fundamental that a demurrer searches the whole record. *McCue v. Washington*, 16 Fed. Cas. 8,735, 3 Cranch C. C. 639.

The Husband of Decedent Was Responsible for Her Necessaries, if Any Liability Therefor Existed.

Appellant contends that no liability whatever existed. If such liability did exist, however, her husband was responsible therefor. Appellee filed a claim against the husband's estate and has not abandoned it.

The cases seems to be uniform in holding that where a husband abandons a wife who is *non compos mentis* and necessities are furnished, he is liable therefor.

Goodale v. Lawrence, 88 N. Y. 513.

Davis v. St. Vincent's, 61 Fed. 277.

But there is no good reason for holding that he is not liable where she abandons him. In the case of *Goodale v. Lawrence*, *supra*, the court said, at page 519:

"It is undoubtedly true that a husband is only bound to support his wife at his own home, and when he is both able and willing to support her there and she wilfully abandons him, she does not carry with her the credit of the husband, nor can she impose any liability upon him. * * *

But an insane wife is incapable of abandoning her husband. When a wife is suffering under such affliction, it is the duty of the husband—a duty imposed by the relation he bears to her as well as by the plainest dictates of humanity—to protect and support her."

It is fundamental that a husband is liable for the wife's necessities. And this has been held to include board while in prison in the case of *Bates v. Enright*, 42 Me. 105, where the Court said at page 113:

"But involuntary separation, without the wife's fault, and in some instances where, by operation of law, it exists through her fault, will not relieve the husband from his legal responsibility to provide for her. If therefore, she be imprisoned for felony, he will be liable for necessities."

In the case of *Bliss v. Bliss*, 133 Md. 61, the Court said at page 74 :

"It is said in 16 Am. & Eng. Ency. of Law (2nd Ed.), 596: 'It is the husband's primary duty to support his insane wife, and it is only when he is unable to do so that resort can be had for her maintenance to her separate estate.' And in 4 Am. & Eng. Ann. Cases, 787, many cases to the same effect are collected. In this state it has been held that the statutes preserving to the wife the ownership and enjoyment of her property do not relieve the husband of his common law obligation to maintain his wife and to pay for medical attendance upon her and her funeral expenses."

If any liability can be said to exist apart from the strict enforcement of Sec. 15 and Sec. 19, *supra*, for necessities furnished to the lunatic while in the hospital, her husband became liable therefor, being under a duty to support her.

The Statute of Limitations is a Bar to Part of Appellee's Claim, if Any Existed.

If any liability arose against the lunatic decedent's estate, the greater portion of the expense was incurred more than three years prior to the death of the intestate (including the period between the date of death and the date of appointment of the personal representative) and appellant's plea of limitations is good. Title 24, Chap. 12, Sec. 341, 342, D. C. Code.

As appears by the bill of particulars (R. 3), the board and care of the lunatic was paid for on a per diem basis, so that, if any action accrued, it accrued at the end of each day and not at the end of each week, month, quarter, year, or other period.

This was not a mutual open account upon which the statute ran from the date of the last item but was an account where the items were all on one side and therefore the statute ran from the date of each item. *Reynolds v. U. S.*, 18 Ct. Cl. 382.

The statute of limitations, of course, runs against the District of Columbia in a case like the present one. *Metropolitan R. R. v. D. C.*, 132 U. S. 1.

In *Humber v. Central Kentucky Asylum*, 100 Ky. 112, it was held that so much of a claim for board, lodging and medical care furnished a lunatic for a period of eight years at \$200 per annum, as accrued within five years prior to suit, was barred by the stat-

ute of limitations, the period of limitations being five years.

The lower court relied upon the *Baker* and *Depue* cases, *supra*, in sustaining appellee's demurrer to appellant's plea of limitations. But neither the *Depue* nor *Baker* cases are applicable to the facts at bar. The suits were both instituted against the committees of the lunatics and not against their estates or personal representatives.

The *Baker* case, *supra*, cites *Campbell v. Holt*, 115 U. S. 620, 629 and quotes therefrom as follows (p. 54):

"In that case it was said: 'We can see no right which the promisor has in law which permits him to plead lapse of time instead of payment, which shall prevent the legislature from repealing that law, because its effect is to make him fulfill his honest obligations'."

The *Baker* case held that the act of 1905, *supra*, which directed the committee or trustee to reimburse the District of Columbia, out of funds of the lunatic, for care and treatment prior to appointment of the committee or trustee was inconsistent with the general statute of limitations and prevented its running. And in the *Depue* case, *supra*, the court held that the right of the equity court, by statute, to direct the affairs of lunatics prevented the running of the statute against the committee for expenses incurred subsequent to appointment.

But the running of the statute certainly cannot be tolled against a decedent's estate by a subsequent statute which relates to an action against his committee. The court in the *Depue* case, *supra*, concedes that the statute permitting recovery against the committee grants a *special* right of action. Obviously, a statute

granting a special right of action does not authorize nor affect the limitation upon the bringing of another one.

If appellee can enforce its claim in any manner other than by using the methods prescribed by Sec. 15 and 19, *supra*, then it is plainly apparent that the statute of limitations applies.

CONCLUSION.

Appellant says that appellee has not declared upon the *special* right of action required by the *Depue* case, *supra*; that its declaration does not allege sufficient facts to bring it within the terms of any statute; that the remedy provided by statute was mandatory and exclusive; that decedent's estate is not liable for the expenses of hospitalization; that decedent's husband was liable for her necessities furnished by appellee, if any liability existed; that the statute of limitations is a bar to a part of appellee's claim and that therefore the judgment should be reversed.

Respectfully submitted,

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Attorney for Appellant.

FILED MAY 26 1939

Joseph W. Stewart

CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1939

No. 7328

ANN V. FITZHUGH, Administratrix, ESTATE OF
MARGARET B. PITNER, Deceased, *Appellant*,

vs.

DISTRICT OF COLUMBIA, A MUNICIPAL
CORPORATION.

BRIEF ON BEHALF OF APPELLEE

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BRIEF ON BEHALF OF APPELLEE

The facts in this case are sufficiently stated in the brief on behalf of appellant. There are four questions presented for the determination of this Court.

1. Whether the declaration was good in form and substance?
2. Whether the estate of a deceased lunatic is liable to the District of Columbia for the cost of the maintenance of the lunatic at St. Elizabeths Hospital?
3. Whether the cost of maintenance of an insane wife is a necessary for which her husband is solely responsible to the District of Columbia?
4. Whether a portion of the claim of the District of Columbia is barred by the statute of limitations?

I

The declaration is good in form and substance.

Appellant moved, in the court below, to strike the original declaration filed herein on the ground that it could not be de-

terminated from said declaration whether the appellee sought thereby to recover under section 14, or section 15, or section 19 of Chapter I, Title 16, D. C. Code of 1929, (R. p. 3). This motion was overruled (R. p. 3). Thereafter an amendment to the declaration was filed (R. p. 4). It is a fair inference from the order permitting the amendment (R. p. 4) that, on the argument of the motion to strike, the Court and the parties hereto treated the declaration as amended. If such is not the case then the appellant, by failing to renew his motion after the amendment, conceded the sufficiency of the declaration as amended. We shall, however, consider the motion to strike as being addressed to the amended declaration.

Prior to the passage of the Act of February 23, 1905, 33 Stat. 740 (sections 18 and 19, Title 16, D. C. Code of 1929), all of the law respecting admissions into the Government Hospital for the Insane (the name of which was changed to St. Elizabeths Hospital by the Act of July 1, 1916, 39 Stat. 309) was found in sections 4838 to 4858 of the Revised Statutes of the United States. Sections 4853 and 4854 of the Revised Statutes (section 14, Title 16, D. C. Code of 1929, quoted on pages 5 and 6 of appellant's brief) provide for the hospitalization of private patients. It is conceded by appellant that the amendment to the declaration, whereby it is alleged that appellant's decedent was "committed to St. Elizabeths Hospital on order of the Commissioners of the District of Columbia on November 16, 1928," removes the contention originally made that so far as the declaration was concerned appellant's decedent may have been admitted to the Hospital as a private patient. But, appellant contends that it cannot be determined from the declaration whether appellee is proceeding under section 4849 of the Revised Statutes (section 15, Title 16, D. C. Code of 1929, quoted on page 6 of appellant's brief), or under the provisions of section 1 of the Act of 1905 (sections 18 and 19, Title 16, D. C. Code of 1929). Section 1 of the Act of 1905 reads as follows:

"That hereafter the proceedings instituted upon petition of the Commissioners of the District of Columbia to determine the mental condition of alleged indigent in-

sane persons and persons alleged to be insane, with homicidal or otherwise dangerous tendencies, shall be according to the provisions of the code of law for the District of Columbia relating to lunacy proceedings: *Provided*, That the jury to be used in case the said Commissioners are the petitioners shall be impaneled by the United States marshal for said District, upon order of the court, from the jurors in attendance upon the criminal courts of said District, who shall perform such services in addition to and as part of their duties in said criminal courts: *Provided further*, That during such time as jurors are not in attendance upon said criminal courts the court may direct the said marshal to impanel the jurors in attendance upon the police court of said District, who shall perform such duties in addition to and as part of their duties in said police court; or the said court may direct a special jury to be summoned for such inquisitions. In case any such person adjudged to be of unsound mind has property, real or personal, the equity court of said District shall have full power in the same cause to appoint a committee or trustee of the person and estate of such person, according to the provisions of said code, and such committee or trustee shall reimburse, out of the funds of the lunatic, the District of Columbia for all court costs expended or incurred by it and for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment."

It is obvious that section 4849 of the Revised Statutes gives no rights to the District of Columbia. Under that section, if an insane person is able to defray a portion, but not the whole, of the expense of his support and treatment at St. Elizabeths, the Board of Visitors of the Hospital may determine the amount he is able to pay and such an amount must be paid to the Superintendent of the Hospital "as a condition upon which such insane person * * * shall receive or continue to receive the benefits of the hospital."

The Act of 1905 establishes the rights of the District where the lunatic, as here, is committed to the hospital upon the petition of the Commissioners of the District. The Commissioners may proceed only in two classes of cases,—first, where the lunatic is indigent, and second, where he has "homicidal

or otherwise dangerous tendencies." Thus, when the declaration was amended to allege that appellant's decedent was committed on order of the Commissioners, the inference must be drawn that the decedent was either indigent or possessed homicidal or otherwise dangerous tendencies;—which one is not material, since, with respect to the right of the District to recover from her estate, the statute makes no distinction between the two classes.

If the declaration was defective, which we do not concede, in not specifically alleging the ground on which the decedent was committed to the hospital, that defect is cured by the averment in the plea that the "adjudication was for unsound mind with dangerous tendencies to others." (R. p. 5). It is well settled that a defect in a declaration resulting from the failure to allege a material fact is cured by an allegation of that fact in the answer.

United States v. Morris, 10 Wheat. 246, 285, 286.

Texas & N. O. R. R. Co. v. Miller, 221 U.S. 408, 416.

Cole v. Ralph, 252 U.S. 286, 290.

This rule has been applied to a case where, as here, after a demurrer had been overruled, the deficiencies of the declaration were supplied by averments in the answer. *Chesney v. Chesney*, 33 Utah, 503, 94 Pac. 989. In the *Chesney* case, the Court said:

" * * * In other words, if there be a defect of substance in the complaint, by reason of which no cause of action is stated, and the answer supplies this defect, the defendant may not avail himself of the defect in the complaint after verdict and judgment. If he desires to rely upon the demurrer after answer, he must be careful not to supply the defects in the complaint by the averments in his answer."

Thus we find the record in this case showing that the decedent was, on order of the Commissioners of the District of Columbia, committed to St. Elizabeths Hospital after an adjudication that she was of unsound mind with dangerous tendencies to others, and that she was hospitalized at the expense

of the appellee for which her estate becomes liable under the Act of 1905.

In the case of *Baker v. District of Columbia*, 39 App. D.C. 42, it was contended on behalf of one committed to St. Elizabeths Hospital prior to the passage of the Act of 1905, but who remained in the hospital after that time, that his estate was liable only under the conditions and to the extent provided in section 4849 U.S.R.S. This Court, however, held the estate was liable for maintenance under the Act of 1905 from the time of its passage, saying:

“ * * * We think Congress thereby intended to declare a change in the relation of the indigent insane, whereby maintenance thereafter received by them should be received upon the condition that they pay therefor when able; in other words, the passage of that act marked a further change in the policy of the law towards the indigent insane. Maintenance thereafter furnished was to be furnished not as ~~an~~ unconditional charity, but upon the expectation of future reimbursement, if the circumstances of the beneficiary should permit.”

In the case of *Depue v. District of Columbia*, 45 App. D.C. 54, this Court considered at length the proper construction to be given the Act of 1905 and its effect upon section 4849 of the Revised Statutes. This Court held that, with respect to lunatics who were indigent or who possessed homicidal or otherwise dangerous tendencies, the Act of 1905 and sections 115(a) to 115(e) of the D. C. Code of 1901, as amended, (sections 1 to 6, Title 16, D. C. Code of 1929) had superseded section 4849 of the Revised Statutes, saying:

“The finding of insanity with homicidal tendencies is important, since, whether indigent or not, it is especially provided for under a later act of congress, which, together with other legislation about to be considered, we think supersedes the above provisions of the Revised Statutes, including section 4849, relating to the commitment of the indigent insane.

* * * * *

“It may be suggested that the mere fact that Depue was committed to the hospital as an insane person with

homicidal tendencies, instead of as an indigent person, is not material, since both classes are embraced within the Act of 1905, and there is no distinction made between them as to the right of recovery for maintenance by the District. In both instances, the duty of instituting proceedings for commitment and of paying for their maintenance in the hospital is imposed upon the District,—in the case of the indigent insane, because of their inability to pay for their maintenance; and in the case of the insane with homicidal tendencies, for the protection of society, irrespective of their ability to pay for their maintenance. The right of action for reimbursement exists in both cases where there is a sufficient estate to admit of legal recovery.”

Thus it follows that, since the decedent was committed to St. Elizabeths Hospital upon the action of the Commissioners, her estate is liable to reimburse the District for such maintenance irrespective of whether she was committed because of indigence or because of dangerous tendencies, whether indigent or not.

II

The estate of appellant's decedent is liable for her maintenance at St. Elizabeths Hospital.

Appellant contends that, even if it is the duty of the committee or trustee of the estate of a lunatic to reimburse the District out of the funds of the lunatic for the expenses incurred in caring for and treating such insane person, the obligation to pay for this maintenance dies with the lunatic. In other words, it is contended that if the committee of the lunatic fails to perform his duty and reimburse the District for the expenses incurred for the maintenance of the lunatic, the estate of the lunatic, after his or her death, is discharged of all liability. If this contention be sustained the estate of a lunatic would benefit by the failure of his committee to comply with the law. Certainly this was not the intent of Congress. Congress intended the District to be reimbursed for its expenditures made on behalf of the lunatic and imposed a positive duty upon the committee to see that such reimbursement was made. This was the interpretation placed

by this Court upon the Act of 1905 in the *Depue* case, *supra*. That Act provides that the committee or trustee shall reimburse the District "for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment." It was contended in the *Depue* case that, under this statute, the estate of the lunatic was only liable for maintenance "up to the time" of the appointment of the committee, and that thereafter the cost of the care of the lunatic must be borne solely by the District. But this Court overruled that contention holding that this Act must be construed in *pari materia* with sections 115(a) to 115(e) of the Code of 1901, as amended, (sections 1 to 6, Title 16, Code of 1929). After quoting at length from the *Baker* case, *supra*, this Court in the *Depue* case said:

"From the language here used, the act is interpreted as meaning that maintenance furnished indigent insane persons after its passage is received by them 'upon the condition that they pay therefor when able.' A new policy is also declared by the act, 'whereby maintenance thereafter furnished was to be furnished, not as an unconditional charity, but upon the expectation of future reimbursement,' should the insane person become possessed of sufficient estate. The concluding words of the section of the act quoted, which appear to limit recovery 'up to the time' of the appointment of the committee or trustee, as suggested in the *Baker* case, relates to the right of recovery prior to the appointment and back to the date of commitment, provided the commitment does not antedate the act. After the appointment of the committee or trustee, the statutes, construed together, confer such general power in the court over the persons and estate of the insane, to subject their property to their support (D. C. Code, sec. 115d), and to supervise the conduct of the committee or trustee upon whom the duty of providing for the support of the ward primarily rests, that its jurisdiction to decree the District reimbursement out of the estate of an insane person cannot be successfully challenged. This court, referring to the power of chancery over the estates of persons *non compos mentis*, as expressed in section 115b of the District Code, said: 'As has been repeatedly said in such cases, the court acts as

parens patriae, armed with the power of the State, and committees and trustees are only its instrumentalities to carry its orders into effect.' *Mackey v. Peters*, 22 App. D.C. 341, 346."

Thus, it will be seen that this Court has held that the intent of Congress, as expressed in the Act of 1905, was that the estate of a lunatic should, if able, reimburse the District for the cost of his maintenance, and that the obligation thus imposed was one which, under the provisions of sections 115(b) and 115(d) of the Code of 1901, could be enforced against the estate of the incompetent even for maintenance furnished after the appointment of the committee. Therefore, it necessarily follows that, if the obligation has not been satisfied in full at the death of the lunatic, it remains as a claim against the estate in the hands of the executor or administrator. Such was assumed by this Court in the *Depue* case to be the law. In that case the lower Court, after ordering the payment of a sum of money to the District to reimburse it, in part, for its expenditures on behalf of the lunatic, directed the committee to retain \$750 to be invested and, out of the income from such investment, to pay the premiums on life insurance policies amounting to \$1300, payable to the estate of the lunatic. The District of Columbia objected to that portion of the order. This Court, however, sustained the order, saying:

" * * * It is not clear just why the District should object to this arrangement. Not only is it assured ultimately of the \$750 invested, but of reimbursement for future maintenance to the extent of the policies, or so much thereof as may be necessary to satisfy its claim."

Since the \$750 invested and the proceeds of the life insurance policies would not be available until the death of the lunatic, it is obvious that this Court recognized the right of the District to present a claim at that time against his estate.

In the case of *Emma S. Gibbs*, Lunatic, Lunacy No. 14,181, in the District Court of the United States for the District of Columbia, Mr. Justice Adkins, in a memorandum opinion, 64 W.L.R. 337, held that, since the authority of a committee terminates with the death of the incompetent, such commit-

tee, after the lunatic's death, was not authorized to pay the claim of the District of Columbia for maintenance of the lunatic, but that such claim "should be presented in the Probate Court."

III

The estate of the appellant's decedent, and not the estate of her husband, is alone liable to the appellee.

Appellant contends that the husband of the deceased lunatic was liable for her support and maintenance and that the District can look to his estate alone for reimbursement. Of course, this argument can only be addressed to so much of the obligation to pay for the support and maintenance of appellant's decedent as accrued prior to the death of her husband, she having survived her husband by more than one year (R. pp. 4, 5).

But we contend that the husband's estate is not liable for any part of the maintenance of the appellant's decedent. The obligation is alone upon the estate of the lunatic. Prior to the passage of the Act of 1905 there was no obligation upon the part of any one to reimburse the District for maintenance of a lunatic. In the *Baker* case, *supra*, this Court said:

"The Government Hospital for the Insane came into being as a public charitable institution. No distinction was originally made between the status of the different classes of persons subject to admission thereto. If an indigent insane person was unable to support himself and family, or himself, if he had no family, he was as a matter of right entitled to the benefits of the hospital; and down to the enactment of the statute of February 28, 1861, which became sec. 4849 of the Revised Statutes, U. S. Comp. Stat. 1901, p. 3358, to which we have previously adverted, there was not a line in the statute indicating any intent on the part of Congress to create any liability on the part of such indigent person on account of his care in such hospital. Under sec. 4849, which was evidently enacted to create a liability where none before existed, an insane person able in part to contribute to his support is made liable therefor to the extent only of his ability to pay. Beyond that ability no obligation is created, and,

we are convinced, none existed. Such was the law upon the passage of said Act of 1905."

In the *Baker* case this Court quoted with approval from the case of *State v. Colligan*, 128 Iowa, 536, 104 N.W. 905, as follows:

"Conceding this legal proposition, we find no authority for holding that the State, having established hospitals for the insane, which are largely charities, and provided, in the interest of humanity and for the protection of society, that insane persons shall be confined therein, has any common-law right to recover against those who receive the benefits of such public charities. The uniform rule seems to be that there is no liability on the part of the person who receives such benefit, *or on the part of his relatives*, to make compensation, save as such compensation may be expressly required and provided for by statute. No such obligation is to be implied." (Italics supplied.)

Thus, it clearly appears that the right of the District to reimbursement for moneys expended for the care and treatment of patients at Saint Elizabeths Hospital, "a public charitable institution," rests solely upon statute. No statute, prior to the new Lunacy Act approved June 8, 1938, and not here involved, gives the District a right to proceed against the husband of a lunatic. The District's sole remedy in this case under the statutes is against the estate of the lunatic.

The authorities seem to be uniform in holding that, where a wife is confined in a public charitable institution and had not been abandoned by her husband so that she became a public charge, the husband, in the absence of statute, is not liable for her support while in such institution.

In the case of *Martin v. Beuter*, 79 W. Va. 604, 91 S.E. 452, the Court in discussing the various cases on the question of the liability of a husband for necessities furnished an insane wife, said:

" * * * In some instances, actions were brought against husbands, by hospitals for the insane, established and maintained by law and at public expense. Under such circumstances, there is no common-law liability or right

of recovery, and liability, therefore, depends upon the terms of the statute. *Richardson v. Stuesser*, 125 Wis. 66, 69 L.R.A. 829, 103 N.W. 261, 4 Ann. Cas. 784; *Delaware County v. McDonald*, 46 Iowa, 170; *Noble County v. Schmoke*, 51 Ind. 416; *Baldwin v. Douglas County*, 37 Neb. 283, 20 L.R.A. 850, 55 N.W. 875; *Watt v. Smith*, 89 Cal. 602, 26 Pac. 1071; *Bangor v. Wiscasset*, 71 Me. 535."

And in the case of *Richardson v. Stuesser*, 125 Wis. 65, 103 N.W. 261, where the statute, like the statute here under consideration, made the estate of an insane person liable for his or her support while in a public hospital, the Court held that no recovery could be had against the husband of a lunatic where he was not guilty of abandoning his wife. After reviewing the authorities upon this subject the Court said:

" * * * The basic idea of the common law rule is that in the special instances where the wife is permitted to use the credit of her husband for her relief and support, she is his agent *ex necessitate legis* or *ex necessitate rei*, failure of duty on his part being the cause of the need. There is no room whatever for that idea where the charity of the law intervenes without fault on the part of the husband for the care and protection of the unfortunate wife, and public safety supersedes him as regards authority and capacity to care for her in his home. Our conclusion is that till the Legislature makes some express provision to the contrary, no recovery can be had of the husband in a case of this sort."

The cases cited by appellant are not in point.

For example, the case of *Goodale v. Lawrence*, 88 N.Y. 513, 42 Am. Rep. 259, was also relied upon by the District of Columbia in the *Baker* case in support of its contention there made that prior to the Act of 1905 a lunatic was liable for his support at St. Elizabeths Hospital. This Court, however, rejected the *Goodale* case as authority for that proposition and in the *Baker* case said:

"In *Goodale v. Lawrence*, 88 N.Y. 513, 42 Am. Rep. 259, recovery was permitted at the suit of a county officer against a husband who had voluntarily permitted his insane wife to absent herself from his house and become a

public charge, recovery being rested 'upon the common-law obligation of the husband to support his wife.' "

In the case of *Davis v. St. Vincent's*, 61 Fed. 277, the husband had abandoned his wife and the suit apparently was by a private corporation for the necessities furnished her.

In the case of *Bates v. Enright*, 42 Me. 105, also relied upon by appellant, a wife, who had been convicted of selling liquor in violation of law, gave to the treasurer of the county promissory notes for the amount of her fine and costs and for her board while in prison, in order to secure her release, as she was permitted to do by statute. The treasurer sued the prisoner's husband upon the notes. After discussing in general terms the law relating to the responsibility of the husband for necessities furnished a wife, the Court, nevertheless, held he was not liable for the payment of the notes.

In the case of *Bliss v. Bliss*, 133 Md. 61, the last case relied upon by appellant, the question was whether the Court below had erred in directing the committee of an insane wife to pay her expenses at a private hospital out of her property, the contention being made that her husband was solely liable for such expenses, but the Court said: (p. 74.)

" * * * But we are not required in this case to determine whether Mrs. Bliss' husband is legally liable for her care at the Shephard and Enoch Pratt Hospital. The Court having jurisdiction of the person and estate of a lunatic must see that her proper care and comfort are provided for out of the funds under its control, leaving the question of the liability of others for the expenses incurred to be determined in some appropriate proceeding."

Therefore, it follows that the District of Columbia can only look for reimbursement to the estate of appellant's decedent and not to the estate of her husband.

IV

The statute of limitations is not a bar to any part of the District's claim.

We contend that the statute of limitations has no application to this case.

In *Baker v. District of Columbia*, 39 App. D.C. 42, this Court said:

"The necessary effect of the act of 1905 is to prevent the running of the statute of limitations, as its provisions are inconsistent therewith. *Campbell v. Holt*, 115 U.S. 620, 629, 29 L. Ed. 483, 487, 6 Sup. Ct. Rep. 209. In that case it was said: 'We can see no right which the promisor has in the law which permits him to plead lapse of time instead of payment, which shall prevent the legislature from repealing that law, because its effect is to make him fulfil his honest obligations.' "

This holding was reiterated by this Court in *Depue v. District of Columbia*, 45 App. D.C. 54.

It is contended, however, by appellant that these holdings have no application here, since this Court, in those cases, was considering the duty of a committee to reimburse the District for the care and maintenance of his incompetent in St. Elizabeths Hospital, whereas, here, a claim against the estate of a deceased lunatic is involved. But there is no reason apparent either in the *Baker* case or in the *Depue* case for this distinction. In the *Baker* case this Court said that the Act of 1905 "marked a further change in the policy of the law towards the indigent insane" and that "maintenance thereafter furnished was to be furnished not as an unconditional charity, but upon the expectation of future reimbursement, if the circumstances of the beneficiary should permit." It frequently happens that the circumstances of the beneficiary do not permit reimbursement until many years after commitment to the hospital. Frequently, one, who is indigent at the time of commitment, comes into the possession of substantial property many years later through inheritance or devise, or by some other means. Congress, as this Court has held, intended that this property should be subjected to the claim of the District for reimbursement for moneys paid on behalf of the lunatic during the full period of the lunatic's stay at the hospital, no matter how long it may be. No reason appears why this right of the District should be reduced by applying the statute of limitations at the death of the lunatic. It sometimes

happens that the money only becomes available for the reimbursement of the District upon the death of the lunatic, as in the *Depue* case, for example, where the lunatic possessed policies of insurance upon his life payable to his estate. Certainly in holding, in the *Depue* case, that the District was "assured ultimately" of the proceeds of such policies this Court excluded any thought that the claim of the District might be barred by the statute of limitations.

Appellant contends that the statute of limitations runs against the District of Columbia, citing *Metropolitan Railroad v. District of Columbia*, 132 U.S. 1. But that case involved a suit brought by the District in its capacity as a municipal corporation. On the other hand, this Court has held in the case of *Compton v. Rudolph*, 56 App. D.C. 211, 12 Fed. (2d) 152, that one occupying land forming part of an alley could not claim title by adverse possession against the District.

The District, in providing for the care and treatment of patients at St. Elizabeths Hospital, is exercising a governmental function. In such a case the statute of limitations cannot be urged as a defense.

In the case of *State v. Moore*, 90 Kan.751, 757, 136 Pac. 233, 236, where the defense of the statute of limitations was interposed in a suit by the State for the maintenance of a lunatic, the Court said:

"The defendant seeks to invoke the statute of limitations. The function of maintaining an asylum for the insane is governmental, and the statute does not run against the state with respect to a claim in connection therewith. *Eastern State Hospital v. Graves*, 105 Va. 151, 52 S.E. 837, 3 L.R.A. (N.S.) 746, 8 Ann. Cas. 701."

In the case of *Eastern State Hospital*, cited above, it was held that the same rule applied even though the action was brought in the name of the State Hospital.

Appellant relies upon the case of *Humber's Trustee v. Central Kentucky Lunatic Asylum*, 100 Ky. 112, 29 S. W. 877, where it was held that a claim for maintenance at the State Asylum was barred by limitations. But it appears from the case of *Louisville & Nashville R.R. Co. v. Smith*, 125 Ky. 336

101 S.W. 317, that, in the State of Kentucky, the sovereign has never been exempted from the effect of the statutes of limitations. Therefore, the case relied on by appellant has no bearing here.

CONCLUSION

For the reasons above stated it is respectfully submitted that the judgment of the Court below is right and should be affirmed.

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